

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
United States Department of Justice,)	RM-10865
Federal Bureau of Investigation, and)	
Drug Enforcement Administration)	
Joint Petition for Rulemaking to)	
Resolve Various Outstanding Issues)	
Concerning the Implementation of the)	
Communications Assistance for)	
Law Enforcement Act)	

COMMENTS OF SKYPE TECHNOLOGIES

Skype Technologies, S.A. ("Skype") hereby comments on the Joint Petition for Expedited Rulemaking filed by the United States Department of Justice, Federal Bureau of Investigation, and Drug Enforcement Administration ("Law Enforcement") asking the Commission to resolve, on an expedited basis, various outstanding issues associated with the implementation of the Communications Assistance for Law Enforcement Act ("CALEA").¹

Skype recognizes the importance of accommodating the needs of law enforcement agencies to conduct lawful electronic surveillance in the face of changing telecommunications technology. In order to foster innovation and competition, however, the focus of efforts to maintain this access should be the underlying transmission network, not applications riding on that network.

¹ Joint Petition for Expedited Rulemaking of United States Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration, RM-10865 (filed March 10, 2004) [hereinafter "Joint Petition"]; see also *Comment Sought on CALEA Petition for Rulemaking*, Public Notice, DA-04-700 (rel. Mar. 12, 2004).

Skype is a Luxembourg company offering peer-to-peer software to consumers throughout the world. By installing this software, users are able to communicate to any other Skype user. At present, 4.5 million people have downloaded Skype's free software. Though Skype users are currently unable to use Skype to connect to the PSTN, Skype shortly will offer its users a means to make communications to and receive communications from the PSTN. The user's computer will always be one point in the communications link; the software will not permit PSTN-to-PSTN communications.

Skype is a leader in IP-enabled communications services, with a direct interest in ensuring the full development of this technology, while at the same time recognizing the reasonable requirements of law enforcement agencies worldwide for appropriate access to telecommunications networks.

I. Software Should Not Be Treated Like A Network.

Skype is software, not a network. It is very much like email, simply allowing users with access to the Internet to use that access to communicate. The proliferation of applications like Skype works to the benefit of consumers and businesses, shifting "power over the prices and terms of service . . . from the provider to the end user."² In applying the requirements of CALEA, the Commission must distinguish between Internet applications and the various telecommunications networks that are the Internet's on- and off-ramps. To do

² *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 at ¶36 (rel. Mar. 10, 2004).

otherwise would threaten the development and use of technologies that the Commission recognizes have the power to transform and add value to communications for the foreseeable future.

II. Skype Does Not Have Access To Peer-To-Peer Communications.

As stated, at present, Skype provides a software application that facilitates peer-to-peer voice communications. Skype does not provide servers, routers, switches or other transmission facilities that carry, route, or process communications among Skype users. Skype does not “track” users with a central directory. All of these functions are performed, instead, by end-users’ computers, using end-users’ Internet access. Because Skype does not carry its users’ communications, it is not technically feasible for Skype to offer public safety agencies access to those communications. Indeed, Law Enforcement recognizes the distinction between Skype and mediated broadband telephony and does not argue for application of CALEA to such peer-to-peer applications.³

It would be disruptive and counter-productive to require Skype to rework the architecture of its applications or otherwise add unnecessary network elements to offer law enforcement agencies access to the data streams of Skype users. These data streams are available to law enforcement agencies when they traverse either the public Internet or the PSTN. Law Enforcement may gain access to these data streams by requiring CALEA compliance from broadband

³ Joint Petition at 16 n.39 (distinguishing “exclusively peer-to-peer broadband telephony applications” from services provided by mediators and arguably subject to CALEA).

access providers and entities that provide connections between the Internet and the PSTN.

A requirement that Skype and similar application-providers make peer-to-peer communications accessible to the worlds' public safety and law enforcement agencies would effectively eliminate true peer-to-peer networks, which are defined by their decentralization, as well as variants of such networks, such as Skype's next generation "one-sided" PSTN service. Through decentralization, these networks are able to scale indefinitely without sacrificing performance or increasing cost.

In Skype's peer-to-peer application its unique distributed architecture does not rely on central servers (which impose marginal costs and impair transmission quality), which means that Skype is able to provide its software free of charge and users are able to experience even better voice quality than they do using their circuit-switched telephones. U.S. consumers and businesses should not be deprived of these benefits or the benefits of future innovations that are based on Skype's peer-to-peer applications. Effectively closing the U.S. to these networks would unnecessarily disadvantage U.S. companies and consumers in the global marketplace.

III. Law Enforcement May Intercept Packet-Based Communications Through The PSTN Or Other Transmission Networks.

Skype recognizes the importance of enabling law enforcement agencies to lawfully intercept electronic communications, but responsibility for CALEA

compliance should rest with network providers. For example, law enforcement agencies have substantial experience intercepting communications that travel across the PSTN and the PSTN is well-suited to wire-tapping and other intercept technology. Consequently, whenever possible, the Commission should place responsibility for CALEA compliance on PSTN network providers. When reliance on PSTN network providers alone is insufficient, compliance responsibility may also be placed upon broadband transmission providers, as these entities will necessarily have access to the relevant data streams.

Conclusion

For the foregoing reasons, Skype urges the Commission to foster continued development of innovative services by limiting CALEA compliance obligations to providers of underlying PSTN and broadband transmission.

Respectfully submitted,

SKYPE TECHNOLOGIES, S.A.

A handwritten signature in black ink, reading "Henry Goldberg". The signature is written in a cursive, flowing style.

Henry Goldberg
Brita Dagmar Strandberg

Its Attorneys

April 12, 2004